

Trenton gay bars found in the NJ Alcohol Beverage Control (ABC) *Bulletin* from the 1930s to the 1970s.

by Brian A. Smith, D.C.

In the four decades of records of the ABC, there were just four bars listed that were located in Trenton. I had heard of just one of them – the bar in the Hotel Penn. This is interesting as that bar once again became a gay bar in the late 1980s (?) when the Zodiac closed. The owners revamped the Z into a cop bar because a new son-in-law was a police officer somewhere and attendance at the Z was falling. Not wanting to completely abandon the gay community completely, they took over the bar in the Hotel Penn and reopened as – *The Mirror Bar*! As can be seen in the postcard included in the Hotel Penn entry, The Mirror Bar dates back to the late 19th century as it was a *First Prize Winner* at the *1893 Chicago World's Fair*.

Of the other three, I could not find any pictures of the bars but the location of the Paddock Inn still stands. An oddity that I was previously unaware of came to light. Broad Street is usually thought of as being the divide between the East and West streets – West State versus East State. But this does not hold true for Front Street. Warren was where the East/West divide occurred. The first block of East Front Street was the first block west of South Broad Street and would have been the location of Shell's Bar & Restaurant while Storky's was in the first block east of South Broad. What's more, West Front Street, which starts at Warren, only has a single block!

The ABC proceedings are in chronological order as given below.

1958	Shell's Bar & Restaurant	24 E Front Street	
1959-64	Paddock Inn	24 So Warren Street	
1959	Storky's	151 E Front Street	
1962	Hotel Penn	81 So Clinton Street	<i>Mirror Bar</i>

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1247

NOVEMBER 12, 1958.

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (Pompton Lakes) - LEWDNESS AND IMMORAL ACTIVITIES (RENTING ROOMS FOR ILLICIT SEXUAL INTERCOURSE) - CONTRACEPTIVES - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 120 DAYS.
2. DISCIPLINARY PROCEEDINGS (Paterson) - SALE TO INTOXICATED PERSON - UNQUALIFIED EMPLOYEE - PRIOR RECORD - PRIOR WARNING AS TO UNQUALIFIED EMPLOYEE - LICENSE SUSPENDED FOR 75 DAYS.
3. DISCIPLINARY PROCEEDINGS (Trenton) - NUISANCE - FAILURE TO HAVE TRUE COPY OF APPLICATION FOR LICENSE ON PREMISES - LICENSE SUSPENDED FOR 65 DAYS.
4. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1958 TO SEPTEMBER 30, 1958 AS REPORTED TO THE DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R. S. 33:1-19.
5. DISCIPLINARY PROCEEDINGS (Kearny) - CHARGES ALLEGING SALES TO MINORS AND FAILURE TO HAVE TRUE COPY OF APPLICATION FOR LICENSE ON PREMISES DISMISSED.
6. STATE LICENSES - NEW APPLICATION FILED.

3. DISCIPLINARY PROCEEDINGS - NUISANCE - FAILURE TO HAVE TRUE COPY OF APPLICATION FOR LICENSE ON PREMISES - LICENSE SUSPENDED FOR 65 DAYS.

In the Matter of Disciplinary
Proceedings against

ISABEL SHELL
t/a SHELL'S BAR & RESTAURANT
24 East Front Street
Trenton 9, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-267 for the 1957-58
licensing year, issued by the
Board of Commissioners of the City
of Trenton and extended for the
1958-59 licensing year.

William Reich, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for the Division of
Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant has pleaded not guilty to the following charges:

'1. On May 10, 17, 18, 23 and 24, 1958, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered female impersonators and persons who appeared to be homosexuals in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

'2. On May 24, 1958, you conducted your licensed business without having a photostatic or other true copy of your application for your current license on the licensed premises available for inspection; in violation of Rule 16(b) of State Regulation No. 20.'

"At the hearing herein the Division called as its principal witness one of three ABC agents who, on the dates alleged in the charge, participated in the investigation of defendant's licensed premises. It was stipulated that if the other agents were produced their testimony would corroborate that of the agent who testified.

"Succinctly stated, the Division sought to establish that on each of three visits to defendant's tavern the agents observed therein two females and about eighteen male patrons whose mannerisms, conduct and language categorized them as homosexuals.

"Specifically, the evidence shows that on the agents' first visit an effeminate male patron engaged them in conversation respecting the identity of a singer whose recorded voice was emanating from a juke box. There being a difference of opinion, the patron said: 'Oh, there is no point in arguing.

I will go ask Geraldine. She should know', and turning to a male nearby he asked: 'Geraldine, could you tell these boys who is singing the song in the juke box?' 'Geraldine' scrutinized the agents cap-a-pie, flickered his eyelids and replied coyly: 'Why that is Julie Andrews, of course, silly.' The agents noted that 'Geraldine' had 'very wavy long hair fluffed on the forehead, combed very thick in the back, tweezed eyebrows, he spoke in high-pitched tones, lispy voice, he swished and swayed as he walked about, held his cigarette very daintily, limp wrists, (held) his glass with his pinky out' and 'he appeared to be a fag'. The agents further noted that the majority of the males present were of the same type as 'Geraldine' and that a female seated at the bar was man-nishly attired, wore no make-up and had a masculine hair cut.

"On their second visit the agents overheard 'Geraldine' say to another effeminate male: 'Oh, I have had him', to which the other stated: 'I almost had him but I missed out and am broken-hearted over the fact.' 'Geraldine' then asked for and received paper and pencil from the bartender, wrote down the telephone number of the person whom they were discussing, and handed the paper to his companion saying: 'Oh, now you will have to doll up for him. He will want you to do that', and the other said: 'Oh, that is fine. I love to doll up.' 'Geraldine' then turned his attentions to the agents and tried persistently to have one of them leave the premises with him saying: 'I'll show you sex like you have never seen.' When the agent refused the invitation, 'Geraldine' walked away and was heard to sing a suggestive parody to a popular number being played on the juke box. A female called Elsa, who had kissed every male in the establishment including the agents, one of whom she endeavored to 'soul' kiss, joined in the double-entendre parody and concluded with salacious comments informative of her perverted tendencies. 'Geraldine' then exhibited to the other patrons and the agents a small replica of the male genitals, which he then placed on his coat lapel proclaiming: 'This is my badge.' The agents observed that the majority of the male patrons on this occasion appeared to be homosexuals.

"On their third visit the agents observed two effeminate males affectionately brushing each other's cheeks and then leave the premises together. Shortly thereafter 'Geraldine' and Elsa arrived. 'Geraldine' greeted the agents and put his arms around the waist of the agent whom he had previously solicited, rubbed his thighs, brushed his forehead and whispered: 'It was love at first sight between you and me.' Receiving no encouragement 'Geraldine' moved to another male seated at the bar. About this time one of the agents invited the licensee to have a drink which she accepted and in reply to the agent's comment that 'There aren't too many gay spots around, are there? It is nice when the kids can get together and come into their own place like this where the straights don't come in and gape at them', she said: 'Yes, it is nice.' After noting that the majority of the patrons present appeared to be homosexuals, the agents identified themselves to the licensee and 'informed her of the fact that these homosexuals were congregating on the premises.' The licensee stated: 'I knew that they came in here, but I can't distinguish them from anyone else.' Just then the agents observed 'Geraldine' embracing and kissing the male whom he had joined at the bar and called the scene to the attention of the licensee who said: 'Oh, I see what you mean. You can't have any of that kind of stuff going on here. I won't allow it any more.' The agents then asked to be shown a copy of her current license application and were informed that her accountant had taken it with him earlier that day.

"The witnesses who testified on behalf of the defendant were a police captain, a sales manager, three patrolmen, a housewife, an accountant, the licensee's bartender and the licensee herself. It appears that none of the witnesses, other than the licensee, her bartender and the police captain, was present on the licensed premises on the dates alleged and that the captain arrived on the early morning of May 24th after the agents had completed their investigation and departed.

"The captain testified, in substance, that he has been night captain of the police department since March 1, 1958, during which time he made regular inspections of taverns throughout the city including defendant's which he visited two or three times a week; that on numerous occasions he observed Jerry, the male referred to as 'Geraldine', seated at the bar in defendant's licensed premises and 'not bothering anyone'; that defendant's other patrons were persons whom he had known for many years and were 'strictly male and female' although 'Jerry is on the effeminate side'; that when he entered defendant's premises on May 24th, the patrons 'were the usual group that came in there and Jerry was with another man'; that 'when I walked in Jerry and the other man walked out and went down Union Alley, that is adjacent to Warren Street in the rear of the Casa Lido Bar'; that he has known the licensee for many years; that she conducts a decent tavern and that 'there have been no complaints whatsoever against her since she has taken over the establishment'.

"The sales manager testified that he has been visiting defendant's tavern two or three times a week for a period of three years and that from his observation the only patron who appeared to be effeminate was Jerry.

"Two patrolmen testified that during their tour of duty when assigned to the post on which defendant's tavern is located, they visited the tavern nightly and that the only eccentric person whom they observed was Jerry who, in their opinion, was 'on the effeminate side'. The other patrolman testified that on his visits to defendant's tavern during his tour of duty he observed Jerry and three or four other males who were on the effeminate side.

"The housewife testified that about four months prior to the charge preferred herein, she had visited defendant's tavern once a week 'for years' and didn't notice any unusual conduct on the part of the patrons. 'They were all friendly'.

"The accountant testified that he takes care of records and financial matters for defendant and some twenty other licensees and that, as is his custom, he took home the copy of defendant's license application in order to prepare her renewal application.

"The bartender testified that he has been employed on defendant's licensed premises since March 15, 1958; that his tour of duty is from 6:00 p.m. to 2:00 a.m.; that he was on duty on the dates alleged and that from his observations the conduct of the patrons would be 'respectable not only in that bar but any bar which is proper'. He further testified that he has known Jerry from childhood and that 'he always had those characteristics' and that none of the other patrons answered the descriptions testified to by the agents.

"The licensee testified that she was in the licensed premises on the dates alleged; that she never noticed anything

abnormal about her patrons; that 'Jerry acted a little like a sissy' but was a gentleman and that Elsa 'was always a very nice person'. She testified further that when the agents made their identities known they told her she was serving 'queers' and that she said: 'If this is what I am doing I certainly would like to find out and get rid of it. But what was I supposed to look for?' She also testified that one of the agents had told her that 'Jerry had kissed a man, but by the time I turned around I didn't see anything'.

"Having carefully considered the facts and circumstances herein with respect to Charge 1, I find that the Division has established by more than a fair preponderance of the evidence that defendant's patrons not only appeared to be sex deviates but that one of them actually solicited an agent for purposes of sex perversion. While it may be true that the licensee had no knowledge of her patrons' lewd proclivities, notwithstanding her association with the tavern business for more than twenty years, nevertheless, it was incumbent upon her as it is with all liquor licensees, to conduct the licensed business in a manner which will not be inimical to the public welfare.

"As was pointed out in Re Schneider, 12 N. J. Super. 449 (App. Div. 1951):

'The object manifestly inherent in the rule with which we are here concerned (likewise Rule 5) is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indecency on the licensed premises. The primary intent of the regulation is to suppress the inception of any immoral activity, not to withhold disciplinary action until the actual consummation of the apprehended evil.'

"It is deemed pertinent to restate herein the language of Judge Jayne in Paddock Bar, Inc. v. Division of ABC, 46 N.J. Super. 405 (App. Div. 1957), wherein he said:

'If the evidence here failed adequately to prove that the described patrons were in fact homosexuals, it certainly proved that they had the conspicuous guise, demeanor, carriage, and appearance of such personalities. It is often in the plumage that we identify the bird. The psychiatrist constructs his deductive conclusions largely upon the ostensible personality behavior and unnatural mannerisms of the patient.'

"I conclude from all the evidence that defendant conducted her business in a manner offensive to common decency and public morals and that she did not have, as required by regulation, a copy of her current license application on her licensed premises. I recommend, therefore, that she be adjudged guilty on both charges. I further recommend that her license be suspended for sixty days on Charge 1, Re Rutgers Cocktail Bar, A Corp., Bulletin 1133, Item 2, and for an additional five days on Charge 2, Re Laffman, Bulletin 1237, Item 6, making a total suspension of sixty-five days."

No exceptions were taken to the Hearer's Report within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the facts and circumstances herein, I concur in the Hearer's findings and conclusions and adopt his recommendations. However, since it appears that the part of the report which deals with licensees' responsibilities should be more fully treated, I am reiterating the principles enunciated in Re T-Bar & Grill, Inc., Bulletin 1237, Item 1, wherein it is stated that:

"*** even in the absence of actual knowledge, a licensee cannot escape the consequences of the occurrence of incidents, such as are hereinabove related, on his licensed premises. He cannot hide behind his employees. Not only is it no defense that the violations may have been committed in his absence or by his agent, servant or employee, or that he did not participate in the violations, or that they were committed contrary to his instructions (Rule 33 of State Regulation No. 20; Stein v. Passaic, Bulletin 451, Item 5) but, in addition, 'licensees may not avoid their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises.' Bilowith v. Passaic, Bulletin 527, Item 3. See also Re One-thirty-five Mulberry St. Corp., Bulletin 892, Item 2. Most certainly, this licensee 'suffered' these lewd and immoral acts to take place in and upon the licensed premises. As the Supreme Court said in Essex Holding Corp. v. Hock, 136 N. J. L. 28, at p. 31, 'Although the word "suffer" may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his knowledge. Guastamachio v. Brennan, 128 Conn. 356; 23 Atl. Rep. (2d) 140.'"

Accordingly, it is, on this 18th day of September, 1958,

ORDERED that Plenary Retail Consumption License C-267, for the 1957-58 licensing year, issued by the Board of Commissioners of the City of Trenton to Isabel Shell, t/a Shell's Bar & Restaurant, for premises 24 East Front Street, Trenton, which license has been extended by my order dated June 27, 1958, be and the same is hereby suspended for sixty-five (65) days, commencing at 2:00 a.m. September 27, 1958, and terminating at 2:00 a.m. December 1, 1958.

WILLIAM HOWE DAVIS
Director.

NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1958 TO SEPTEMBER 30, 1958 AS REPORTED TO THE DIRECTOR
OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19

C L A S S I F I C A T I O N O F L I C E N S E S

County	Plenary Retail Consumption		Plenary Retail Distribution		Club		Limited Retail Distribution		Seasonal Retail Consumption		Number Surren- dered Expired	Number Licen- ses in Effect	Total Fees Paid
	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid			
Atlantic	487	\$ 208,460.00	72	\$ 25,875.00	24	\$ 2,295.00						583	\$ 236,630.00
Bergen	811	307,822.50	301	87,988.00	110	10,420.00	53	\$ 2,496.50	5	\$1,381.63		1280	410,108.63
Burlington	186	81,268.63	40	12,225.00	44	6,200.00	1	50.00				271	99,743.63
Camden	453	224,457.53	82	33,925.00	73	7,311.24			1	375.00		609	266,068.77
Cape May	135	76,800.00	11	4,000.00	16	1,950.00						162	82,750.00
Cumberland	80	40,875.00	14	3,700.00	30	4,060.00						124	48,635.00
Essex	1347	759,610.00	350	209,760.00	101	13,875.00	28	1,400.00	1	750.00		1827	985,395.00
Gloucester	108	38,595.00	15	3,920.00	22	1,950.00						145	44,465.00
Hudson	1538	697,871.43	298	122,400.00	81	9,550.00	63	2,700.00				1980	832,521.43
Hunterdon	79	28,000.00	9	3,360.00	10	1,100.00						98	32,460.00
Mercer	422	259,850.00	51	21,400.00	54	7,700.00			1	391.63		528	289,341.63
Middlesex	632	312,605.00	75	24,395.00	96	8,630.00	4	200.00				807	345,830.00
Monmouth	548	286,642.95	122	43,620.00	43	4,800.00	10	435.00	24	11,201.52		747	346,699.47
Morris	355	131,828.01	97	32,750.00	52	4,773.60	19	950.00	5	1,312.50		528	171,614.11
Ocean	185	107,225.64	47	19,680.00	24	2,575.00						256	129,480.64
Passaic	869	357,105.36	167	51,330.00	41	5,025.00	9	425.00				1086	413,885.36
Salem	51	19,300.00	8	1,550.00	20	1,675.00						79	22,525.00
Somerset	187	85,700.00	41	12,595.00	27	3,150.00						255	101,445.00
Sussex	165	45,805.00	21	4,185.00	9	545.00	1	50.00	1	225.00		197	50,810.00
Union	549	306,117.26	144	66,860.00	77	9,075.00	28	1,375.00				798	383,427.26
Warren	148	44,070.00	20	5,060.00	28	3,100.00			2	318.84		198	52,548.84
Total	9335	\$4,420,009.31	1985	\$ 790,578.00	982	\$109,759.84	216	\$10,081.50	40	\$15,956.12		12558	\$5,346,384.77

William Howe Davis
Director

October 28, 1958.

5. DISCIPLINARY PROCEEDINGS - CHARGES ALLEGING SALES TO MINORS AND FAILURE TO HAVE TRUE COPY OF APPLICATION FOR LICENSE ON PREMISES DISMISSED.

In the Matter of Disciplinary
Proceedings against

JAMES R. CLARK
t/a KEARNY YACHT CLUB
427 Passaic Avenue
Kearny, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-11 (for the 1957-58
and 1958-59 licensing years), issued
by the Town Council of the Town of
Kearny.

Simandl and Leff, Esqs., by Robert H. Simandl, Esq., Attorneys
for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charges:

'1. On April 11, 1958, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Elena ---, age 18, and Marie ---, age 19, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.

'2. On April 11 and 12, 1958, you conducted your licensed business without having a photostatic or other true copy of your application for your current license on the licensed premises available for inspection; in violation of Rule 16(b) of State Regulation No. 20.'

"As to Charge 1: At the hearing held herein an ABC agent testified that he and another agent were seated at a table in the dining room of defendant's licensed premises on the evening of April 11, 1958; that shortly after 11:00 p.m. two couples came from the dance floor and took seats at an adjoining table on which there were a large number of empty glasses and an empty pitcher; that shortly thereafter, in response to an order received from one of the group at the adjoining table, Mrs. Phillips (a waitress) brought a pitcher of beer to the table, placed it in the center of the table and received payment therefor; that one of the young men in the group then filled four glasses with beer; and that each of the four patrons at the adjoining table was drinking the beer when the agents went to the table and identified themselves. Subsequent investigation made by the agents disclosed that the two young men in the party were of full age but that Elena was actually eighteen years of age and Marie actually nineteen years of age, although each stated to the agents that she was twenty-two years of age. A second ABC agent substantially corroborated the testimony of the first ABC agent.

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

June 29, 1960.

BULLETIN 1342

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AS A NUISANCE (FEMALE IMPERSONATORS) - PRIOR RECORD OF PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR 65 DAYS. (Trenton)
2. DISCIPLINARY PROCEEDINGS (Bayonne) - PLENARY WHOLESALE LICENSEE - SALE FOR OTHER THAN CASH TO RETAILER ON DEFAULT LIST - CHARGE ALLEGING HINDRANCE OF INVESTIGATION DISMISSED - LICENSE SUSPENDED FOR 25 DAYS.
3. DISCIPLINARY PROCEEDINGS (Butler) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS.
4. ACTIVITY REPORT FOR MAY 1960.
5. DISCIPLINARY PROCEEDINGS (Hoboken) - HOSTESSES - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Belmar) - DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED UPON RESUMPTION OF BUSINESS.

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

June 29, 1960.

BULLETIN 1342

1. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AS A NUISANCE
(FEMALE IMPERSONATORS) - PRIOR RECORD OF PREDECESSOR IN INTEREST -
LICENSE SUSPENDED FOR 65 DAYS.

In the Matter of Disciplinary)
Proceedings against)

VIOLA S. HAJE)
t/a THE PADDOCK INN)
24 S. Warren Street)
Trenton 8, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-177, issued by the Board of)
Commissioners of the City of Trenton)

Stark and Stark, Esqs., by Sidney S. Stark, Esq., Attorneys for
Defendant-licensee.

Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charge:

'On October 10, 16 and 17, 1959, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance, viz., in that you allowed, permitted and suffered thereon, males impersonating females, who appeared to be homosexuals; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.'

"An ABC agent testified that on the early morning of October 10 and on the evening of October 16, 1959, he and a fellow agent visited defendant's licensed premises, and on each occasion observed the defendant and Walter Bozek tending bar. On the second visit the agents remained on the premises until the early morning of October 17. On October 10th there were thirty-eight males and one female patron in the premises when the agents entered and the number remained constant until closing time. The agent testified that 95 per cent of the males acted in an effeminate manner; that many of them wore tight chino pants, bulky knit sweaters with the sleeves rolled to their elbows and loafer shoes or low cut white sneakers. The males in question when walking swished their hips from side to side and walked 'on the balls of their feet'. Moreover, the agent observed that they permitted the wrist to remain limp when holding their glasses and that their cigarettes were held in a very dainty fashion. The males were in groups of 'from two to four' and they spoke in lispy, high-pitched voices, placed their hands on one another's arms or stroked each other's faces at the same time looking into each other's eyes in an endearing manner. At times they were

heard referring to one another as adorable, honey, doll or sweetie. On one occasion the agents testified that he overheard a conversation wherein one male patron remarked that he was in a blue mood and that whenever he came into defendant's premises he got depressed. Another remarked, 'Every time I come here I get an uncontrollable urge', while a third male was heard to say, 'Well, anyway, whenever we come here we lose our sex'.

"The agent aforementioned testified that he and the agent who had accompanied him on the previous visit entered defendant's premises at 10:10 p.m. on Friday, October 16, 1959. Fourteen males and one female were present but the patronage increased during the evening until about forty-five males and three females were in the premises. He testified that his observation of the patrons at the height of the evening showed that about the same percentage of males as on the prior visit behaved in an effeminate manner and that their actions, voices and expressions of endearment were similar to the description given by him on the occasion of his former visit. The agent testified that, during the evening, a person called Danny, seated at the bar immediately to his right, introduced himself and for about two hours engaged with him and his fellow-agent in conversation. Danny used effeminate expressions, fluttered his eyes and held his hands in a 'limp wrist fashion'. Danny discussed the establishment and some of the male patrons and their unnatural proclivities. The agent testified that, at times, both defendant and Bozek came over to wash glasses in the sink immediately in front of the agents. At one time Bozek came over and warned Danny to watch his language. Danny introduced the agent to defendant and, when the agent described the place as a 'nice gay spot', the defendant became flustered and stammered. She said, 'Gay? There's nothing gay in here'. When the agent said, 'It looks to us to be gay', the defendant immediately replied, 'They are not bothering anybody. They are their own kind. Some people go one place and other people go to another place. They are not bothering anybody and I don't see anything wrong'. The agent testified that, thereafter, he and his fellow-agent identified themselves to the defendant and to Bozek but both denied that there were any homosexuals in the place. When asked by the agent what in her opinion is a fag or a queer, defendant said, 'Someone who wears makeup, has long hair and wears dresses. I don't see anyone like that in here'. According to the agent, defendant admitted overhearing conversations while tending bar but denied any wrong doing on the part of anyone.

"It was stipulated by the attorneys for the parties hereto that if the other agent who had also been at defendant's premises at the times in question were called as a witness, his direct testimony would be substantially similar to that of his fellow-agent. Both agents were subjected to extensive cross-examination by the defendant's attorney without any material change in the testimony elicited on direct examination.

"Richard L. Chorba and Bernard DeAngelis, police officers employed by the municipality wherein the defendant's licensed premises are located, testified that they are familiar with the particular location because each had been assigned to that area for a considerable time. Moreover, the officers testified that when on night duty, they checked defendant's premises and had never seen anything unusual about the patrons.

"William Zupan testified that prior to his retirement on January 1, 1960, he was a member of the police department and for a period of fourteen months held the position of Alcoholic Beverage Inspector. He testified that in an official capacity he visited defendant's premises, especially during the late hours, and never found anything wrong. He testified that he observed male patrons

in the premises wearing sport clothing, others in business suits, while 'some of the fellows had Ivy League clothing on'. When asked for an explanation what he meant by 'Ivy League clothing', he said, 'Chinos. They are tight fitting clothing' and some wore bulky sweaters. Zupan further testified that he had never received a complaint about defendant's premises from his superior officers or from any city official and he never had any reason to believe that homosexuals gathered thereon.

"The defendant's witnesses aforementioned testified that they were not present on the dates mentioned in the charges preferred herein.

"George Charok testified that he is a daily patron of defendant's establishment and recalled that he visited defendant's premises about 12:20 a.m. on October 17, 1959 and remained there until closing time. He testified that there was nothing unusual about the male patrons and, although he saw some males dressed in tight chino pants, they did not swish their hips while walking, walk on the 'balls of their feet', hold their glasses in a dainty fashion with their fingers extended, hold in a dainty manner cigarettes, or speak in high-pitched voices. Furthermore, Charok testified that no one appeared to him to be a homosexual and although he knew Danny, the latter never made any immoral proposition to him. On cross-examination he was asked:

Q. But on most times -- or particularly with respect to the night you are talking about, you just went in there, bought your drinks, minded your own business, didn't bother with anybody, didn't look around or anything, you had your drinks and you went home. Is that right?

A. That's right.

"Frank Neneza, a bartender employed in another licensed premises, testified that occasionally he visits defendant's establishment late at night and had never seen anybody who appeared to him to be the least bit suspicious.

"William Southwick testified that on Saturday evenings he tends bar in defendant's premises and occasionally visits the premises on other nights. He stated that he has seen males dressed in chino pants and wearing bulky sweaters but has never observed any patron exhibiting effeminate characteristics or heard the use of endearing terms when talking to one another. Neither he nor Neneza were in defendant's premises at the times in question.

"Walter Bozek's testimony discloses that he tended bar on October 10th, 16th and early morning of October 17th 1959, and remembered seeing the agents on the 16th and 17th. On the latter dates the male patrons were dressed in business suits, some in working clothes and three or four had on chino trousers, but none of the patrons spoke with high-pitched voices or behaved in an effeminate manner. He knew that the defendant had been warned about permitting homosexuals on the licensed premises and, since the warning, he had put out 30 persons who appeared to be 'queers, fags and everything'. He claimed that no one answering the description given by the agents was in the premises. He testified that Danny came into the premises over a period of five or six months on the average of twice a week, but his appearance or speech was in no way effeminate. He stated that on one occasion he tapped Danny on the shoulder and requested that he stop swearing as a female was standing alongside of him.

"Defendant testified that on October 10th, she served the

agents and recalled that most of the customers in the premises were well dressed and that some rolled up the sleeves of their bulky knit sweaters when using the bowling machine. The defendant described many of her patrons as students who had been in service but now attended a local college and dressed as college boys. She testified that she never observed patrons swish their hips when walking, nor had she ever heard them lisp, speak in high-pitched voices or use terms affectionate toward one another. Defendant testified that she knew Danny but did not believe anything to be wrong with him, nor had he ever been offensive to her.

"Charok, with the exception of Bozek and herself, was the only witness produced by appellant who was in the licensed premises at the times in question. Charok testified that he did not recall seeing the agents and never saw anything unusual about the patrons. He did emphasize the fact that when in defendant's premises he ordinarily minded his own business, had his drinks and went home.

"It is clear from the evidence that none of the male patrons wore feminine attire. However, I am satisfied from the testimony of the agents that at the times in question, a large percentage of the male patrons by their walk, speech, actions and other mannerisms were homosexuals.

"In The Paddock Bar, Inc., Bulletin 1159, Item 2, wherein defendant was adjudged guilty of a charge similar to that herein, the following was stated:

'The congregating of so large a percentage of male patrons possessing the same general features, characteristics and mannerisms is more than a mere coincidence. Proper liquor control dictates that the congregating of homosexuals on licensed premises must be staunchly prohibited. To permit such persons to gather and congregate in large numbers as in the instant case is in itself detrimental to the public welfare and tends to encourage them to carry on their unnatural practices. In addition, innocent members of the public frequenting such premises, by being exposed to these conditions, may well be adversely affected. Cf. Re Kaczka and Trobiano, Bulletin 1063, Item 1.'

"On affirmation on appeal from the determination of the Director in the aforementioned case, Judge Jayne, speaking for the Appellate Division of the Superior Court of New Jersey, (49 N.J. Super. 299) remarked:

'If the evidence here failed adequately to prove that the described patrons were in fact homosexuals, it certainly proved that they had the conspicuous guise, demeanor, carriage, and appearance of such personalities. It is often in the plumage that we identify the bird....'

"It is apparent from the testimony of the agents that the male persons in question were what are commonly termed 'female impersonators'. Female garb is not necessary for such a finding. Re Kaczka and Trobiano, supra.

"After careful examination of all the evidence in this case, I recommend that defendant be found guilty of allowing, permitting and suffering her licensed premises to be conducted in such a manner as to become a nuisance, pursuant to the charge preferred herein.

"Defendant has no prior adjudicated record. However, when

the license was held in the name of The Paddock, Inc., of which defendant was the secretary-treasurer and a shareholder thereof, effective February 2, 1959 the license was suspended by the local issuing authority for five days for sale of alcoholic beverages to a minor. I recommend that on the present charge defendant's license be suspended for sixty days. Re Rutgers Cocktail Bar, A Corp., Bulletin 1133, Item 2; Re Clover Leaf Inn, Inc., Bulletin 1159, Item 1; Re The Paddock Bar, Inc., supra (sub. nom. Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, supra). Because of the prior dissimilar violation within the past five years, I recommend that defendant's license be suspended for an additional five days, making a total suspension of sixty-five days."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by the defendant's attorneys, pursuant to Rule 6 of State Regulation No. 16.

After carefully considering the entire record in this case, including the transcript of testimony, the Hearer's Report, the written exceptions and the written argument filed herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 5th day of May 1960,

ORDERED that Plenary Retail Consumption License C-177, issued by the Board of Commissioners of the City of Trenton to Viola S. Haje, t/a The Paddock Inn, for premises 24 S. Warren Street, Trenton, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m., Monday, May 16, 1960; and it is further

ORDERED that any renewal for the 1960-61 licensing year or transfer of said license shall be and remain under suspension until 2:00 a.m., Wednesday, July 20, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1543

JANUARY 6, 1964

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - DOMAPP, INC. v. NEWARK.
2. DISCIPLINARY PROCEEDINGS (Atlantic City) - LEWDNESS AND IMMORAL ACTIVITY (INDECENT ENTERTAINMENT) - HOSTESS ACTIVITY - PRIOR SIMILAR AND DISSIMILAR RECORD - NO REMISSION FOR PLEA ENTERED AT HEARING - LICENSE SUSPENDED FOR 110 DAYS.
3. DISCIPLINARY PROCEEDINGS (Trenton) - NUISANCE (APPARENT HOMOSEXUALS) - LICENSE SUSPENDED FOR 60 DAYS.
4. DISCIPLINARY PROCEEDINGS (Clifton) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (Wallington) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
6. STATE LICENSES - NEW APPLICATION FILED.

Accordingly, it is, on this 18th day of November, 1963,

ORDERED that Plenary Retail Consumption License C-139, issued by the Board of Commissioners of the City of Atlantic City to Jockey Club, Inc., t/a Jockey Club, for premises 5-7-7 1/2-9 S. North Carolina Avenue, Atlantic City, be and the same is hereby suspended for one hundred ten (110) days, commencing at 7:00 a.m. Monday, November 25, 1963, and terminating at 7:00 a.m. Saturday, March 14, 1964.

EMERSON A. TSCHUPP
ACTING DIRECTOR

3. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) -
LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary)
Proceedings against)

ANTHONY GEORGE CAPPUCCIO)
t/a THE PADDOCK INN)
24 South Warren St.)
Trenton 8, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-177, issued by the City)
Council of the City of Trenton.)

Edward A. Costigan, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"The licensee pleads not guilty to a charge as follows:

'On March 22, 29, 30, April 19 and 20, 1963, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, e.g., males impersonating females, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.'

"The factual setting for the Division's case was developed through the testimony of two ABC agents. Acting upon a specific assignment to investigate alleged homosexual activities at the above licensed premises, they first entered the tavern on March 22, 1963, at about 9:15 p.m. During their stay, which was concluded at 10:45 p.m., they observed that there were twenty-eight patrons at the height of activity, of whom seven were females and twenty-one were males. Ten of the males particularly attracted their attention because they congregated in one area at the rear of the bar and had characteristics, similar actions, demeanor and behavior. These were described as follows: Some of them would touch the others on the face and hands very 'lightly, softly;'

they looked at each other and fluttered their eyes as they spoke; those who were attached to another would run their fingers through the hair of their companion; they spoke in high, lispy tones but in a soft manner. As they walked, their gait was a decided effeminate gait; 'they walked on the balls of their feet and shifted from side to side in a swishy fashion.'

"They smoked their cigarettes in a dainty, effeminate manner; they used a limp wrist action when in conversation or even when sitting in a relaxed position with their elbow on the bar. In holding their drinks they extended their little fingers and held the glass very effeminately as they sipped the contents of the glass. Even in their play at the bowling machine they appeared to bowl in an effeminate manner, holding their cigarettes high as a female would. Based upon their actions, mannerisms and demeanor, it was the opinion of the agents that they appeared to be males who were impersonating females and 'I think they were fags or queers.'

"The agents returned to the licensed premises late in the evening of March 29th and stayed into the early morning of March 30, 1963. They made note of the fact that the licensee was also tending bar on this night; associated with him was another bartender known as Larry. At the height of the activity there were thirty patrons, of whom twenty-five were males and five females. Of the males, twenty attracted their attention because they manifested the same behavior as hereinabove described and also congregated in one group at the rear of the bar. The agent particularly noted on this night that they spoke in high-pitched, lispy tones, and as they walked to and from the juke box 'they swished their hips from side to side.' The agents also noted that a number of these were paired off in couples and were seated close to each other and looked into each other's eyes 'more effeminately and sang into each other's face, face to face, as a female would sing perhaps to a male.'

"On one occasion on this evening, a young patron came into the premises and apparently was suspected of being an ABC agent. One of the apparent homosexuals seated near one of the ABC agents was heard to say, 'I think that he's an ABC man', and another apparent homosexual replied, 'Oh, "F" him, I'm behaving myself.' One of the agents then commented to Larry (the bartender), 'I see that you have all the girls down at your end of the bar, but I wouldn't want to dance with that kind.' Replied Larry laughingly, 'Yes, I do.'

"A little later in the evening one of the agents asked the licensee, 'Where do all the fags come from?' to which the licensee answered, 'From here and from there.' The agent then asked when some real girls were going to come to the place, and the licensee assured him that he expected some real girls, 'not fags', on the following week.

"The last visit was made by these agents on the evening of April 19th extending into the early morning of April 20th. After the agents were in the premises for a while, it became quite obvious to them that they had been recognized as such agents because they were 'isolated' from the rest of the patrons who had been fore-warned of their presence. On this occasion there were twenty-four patrons at the height of activity, twenty of whom were males. Of this number seventeen of the males seated in the rear portion of the bar fitted the description of

apparent homosexuals as hereinabove described.

"After it became very clear that they had been recognized, the agents engaged in a conversation with the licensee and questioned him about the 'fags' in the rear portion of the bar. The licensee stated that he wasn't interested in what acts they committed outside the premises 'as long as they behaved themselves while in the premises.' The agent then advised him that, so long as these 'fags' came into the place, they wouldn't have regular girls come into his establishment. The licensee then stated that he didn't care about that as long as he had the business and they behaved themselves. When it was pointed out that those persons were definitely 'fags,' the agent testified that the licensee shouted, 'how do you know that they are fags? Can I tell positively that they are fags, and that if I can't I should keep my mouth shut--I should be quiet.'

"At 12:30 a.m. on April 30, 1963, agents followed the licensee to the exterior of the premises and identified themselves. In a discussion regarding the nature of the activity, the licensee stated that he was aware that the prior owner had a record of homosexual activity on these premises; that in fact, since he bought the license, he 'threw out' six of these apparent homosexuals who were 'acting up' and wouldn't allow them to come in. So far as the others were concerned, as long as they behaved themselves he permitted them to patronize the tavern. He also pleaded ignorance of the fact that he was not permitted to allow the congregation of apparent homosexuals as long as they behaved themselves.

"On cross examination it was developed that Agent D did not have any particular training in psychology or had taken any courses pertaining to homosexuality. However, he stated that he had been with the Division for four years; had participated in a number of investigations of alleged homosexual activity for this Division, and had had some experience even prior to becoming associated in his present capacity in observing apparent homosexuals.

"The agent admitted that these apparent homosexuals were on their best behavior and 'didn't flaunt their perversions in a loud manner.' He was asked to define what he meant by 'lispy' in describing the tone of voice in which these apparent homosexuals spoke. He defined it as follows: 'They use a lispy tone and that would be when they carry out the "S's" and words they are talking about in an effeminate manner. The only way to say it is like a very effeminate person would talk.' He also described the rolling of their eyes as follows: 'I said on some I saw their eyes roll and the fluttering of eyelashes in a very effeminate manner.'

"It should be noted that the testimony of ABC agent S on direct examination was, by stipulation of counsel, entirely corroborative of the testimony of Agent D. On cross examination he merely admitted that none of the apparent homosexuals had 'propositioned' him nor did he directly question them on the occasion of his visits to these premises.

"Testifying on behalf of the licensee, Hugh E. Langcaskey, a detective employed by the Police Department of Trenton, stated that he recalled the investigation resulting in the suspension of license of the former licensee of these premises for similar violation (Re Haje, Bulletin 1342, Item 1). After the present licensee took possession of these premises on March 12, 1963, this witness visited the said premises on one occasion and observed that there were three patrons in the tavern, all of whom were

known to him personally. He would also 'drop in to see who was in the place' occasionally on a Friday evening or a Saturday evening when he was working, and didn't observe any illegal activity. He particularly noted that on a Saturday evening, when there was a 'grand opening,' he found the place extremely crowded and the patronage consisted mostly of local businessmen. On cross examination he admitted that he was not present on the nights set forth in the charge herein or, if he did visit there, he was there for just a few minutes. He added that he was positively not in the premises on the night of April 19th or the early morning of April 20th. He was then asked with respect to the particular night on which the detective testified as to the large number of patrons that visited these premises in the following way:

'Q Then, my question is on that particular night did you see any persons in there who appeared to you to be homosexuals?

A I couldn't say on that night.

Q You couldn't say?

A I couldn't really say that night.'

"Anthony George Cappuccio (the licensee), testifying in defense of the charge herein, generally denied its essential allegations. More specifically, he stated that, when the ABC agents accused him of having 'a bunch of fags all the way down the line,' he replied, 'You'd better shut your mouth unless you can prove it.' He also asserted that, after he purchased this tavern from Mrs. Haje, he did his best to clean about sixteen or seventeen out of there and, if there are any more left in there, he doesn't know who they are. He insisted that he could not tell who was a female impersonator and that, if he tried to accuse them, they would probably sue him.

"On cross examination he stated that he had been engaged in the alcoholic beverage industry for about six months, and prior to that had been a butcher. He again vigorously denied that there were any so-called 'fags' in his premises and he insisted that, when he was accused of having these apparent homosexuals, he told the agents that they had better prove it by identifying them. However, those persons who were pointed out by the agents were, in his opinion, normal people and did not fit the description of apparent homosexuals. He was then asked whether he would conclude that persons possessed of the characteristics, mannerisms and behavior described by the ABC agents might 'possibly be homosexuals' and he answered, 'Well, who am I to prove that? After all I hold a cigarette this way. I flick it this way. I'm one too?' The witness insisted that in his entire lifetime he came into contact with only one homosexual. Finally, the witness denied that the persons fitting the descriptions given by the agents ever came into his tavern on the nights in question.

"Alexander S. Engi, testifying on behalf of the licensee, stated that he frequents the licensed premises every night and did not see any apparent homosexuals on the premises.

"In rebuttal testimony, both agents stated that the licensee informed them that, after he purchased these premises and took over the license, he threw out of the premises six or seven of the homosexuals who were 'acting up.' The licensee also informed them that he was well aware of the fact that Mrs. Haje's license had been suspended for permitting the congregation of homosexuals

and that he was trying to do the best that he could to remedy the situation; he felt, however, that, as long as they were behaving themselves, they 'couldn't help themselves being what they were.'

"I have detailed much of the testimony of both the witnesses for the Division and of the licensee in order to develop an objective perspective of the facts upon which the charge herein is based. My careful analysis and evaluation of the testimony, together with my observation of the demeanor of the witnesses as they testified at the hearing, lead me to the considered conviction that the version as presented by the agents of what transpired on the dates in question is a credible, forthright and true version.

"On the contrary, I was singularly unimpressed with the credibility and the demeanor of the licensee. He operates under the mistaken impression that the congregation of apparent homosexuals is perfectly permissible as long as they don't commit any overt acts or cause a disturbance. The authority is so well established as not to require citation for the premise that overt acts need not be committed nor are they the true measure in determining whether the pertinent rule has been violated. The licensee at one point testified that he has only met one homosexual in his entire life. Yet, on the other hand, he asserts that, after he purchased the licensed premises from Mrs. Haje, he 'cleaned out' at least sixteen or seventeen homosexuals who were habitués of these premises.

"The licensee knew that these premises had had a reputation for permitting the congregation of apparent homosexuals. This was a poorly kept secret. It thus became the obligation and prime responsibility of the licensee to see to it that this type of violation was not repeated on these premises after he assumed operation thereof. But if he was going to continue to operate upon the premise that these apparent homosexuals could not be evicted unless there was positive proof that they were homosexuals, then, of course, this condition would never be changed.

"The licensee has reiterated that he had no way of proving that these apparent homosexuals were in fact homosexuals and admitted that he stated to the agents that, unless they could prove the fact, he should not be charged with such offense. However, if the description of the manner, conduct and characteristics of these apparent homosexuals as given by the agents is accurate, then it was the duty of the licensee to recognize that these persons were apparent homosexuals, as charged. The testimony also is persuasive that the bartender employed by the licensee was fully aware of the fact that these large numbers of persons congregating in the rear portion of the bar and acting in the manner as described hereinabove were apparent homosexuals. The conversation which I have set forth hereinabove buttresses that conclusion. I am equally persuaded that the licensee was fully aware of their presence and, in the interest of doing more business, permitted that condition to exist and to continue.

"In a letter to the Director, supplementing the oral summation at the conclusion of the hearing, counsel for the licensee advocates that the licensee has not been given enough time to 'completely convert the type of trade at this well known location;' that more time should have been given to the licensee or some warning should have been given to him before he was actually charged as hereinabove; 'that at least two or three months should be allowed a new licensee under these circumstances to convert the previous type of business before charges are made against him for violations which he has not caused.' This reasoning must, of course, be summarily rejected. As was pointed out in Re Polka Club, Inc., Bulletin 1045, Item 6:

'Rigid enforcement of the regulations ... is essential to the preservation of decency and the protection of the public morals'

"Since the licensee was well aware of the conditions that existed, he should have acted with determination, firmness and promptness and not have suffered the condition to continue. As Justice Jayne, speaking for the court in In re 17 Club, Inc., 26 N.J. Super. 43, at p. 52, said:

'The governmental power extensively to supervise the conduct of the liquor business and to confine the conduct of that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support.'

"I am further convinced that the licensee was fully aware of the conduct, mannerisms and behavior of apparent homosexuals -- otherwise, he would not have excluded the sixteen or seventeen of the more flagrant violators from his premises, as he testified. It is also clear that he should have been able to recognize that the large numbers of persons congregated at the rear of the bar were apparent homosexuals, as described. As the court stated in Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N.J. Super. 405 (App. Div. 1957):

'If the evidence here failed adequately to prove that the described patrons were in fact homosexuals, it certainly proved that they had the conspicuous guise, demeanor, carriage, and appearance of such personalities. It is often in the plumage that we identify the bird. The psychiatrist constructs his deductive conclusions largely upon the ostensible personality behavior and unnatural mannerisms of the patient.'

"The mannerisms and behavior of the individuals described by the agents clearly come within the purview of that definition. While it is true that these individuals did not wear female garb, such garb is not necessary for the finding that they were apparent homosexuals. Re Kaczka and Trobiano, Bulletin 1063, Item 1; Re Rutgers Cocktail Bar, A Corp., Bulletin 1133, Item 2.

Item 1: "As the Director stated in Re Hoover, Bulletin 1521,

'Proper liquor control, bearing in mind that our primary responsibility is to protect the public welfare, dictates that the congregating of homosexuals or apparent homosexuals or males impersonating females on licensed premises be staunchly prohibited. The situation disclosed by the records in this case constitutes a nuisance and, as such, is a clear violation of Rule 5 of State Regulation No. 20 as alleged in the charge.'

To permit such persons to congregate in large numbers on licensed premises is itself detrimental to the public welfare and tends to encourage them to carry on their unnatural practices. In addition, innocent members of the public frequenting such premises, by being exposed to these conditions, may well be adversely affected.

"After reviewing the evidence, the exhibits and the oral and written arguments of counsel, I conclude that the Division has established the truth of the charge by a fair preponderance of the believable evidence. I recommend that the licensee be found guilty of the said charge.

"Licensee has no prior adjudicated record. I further recommend that, in view of the relatively large number of apparent homosexuals without evidence of any overt acts of indecency, an order be entered suspending the license for a period of sixty days. Re Rutgers Cocktail Bar, A Corp., supra; Re Kobbler, Bulletin 1529, Item 2; Re Ashen, Bulletin 1495, Item 7."

Pursuant to Rule 6 of State Regulation No. 16, the attorney for the licensee filed written exceptions to the Hearer's Report, supported by written arguments thereto.

Having carefully considered all the evidence, argument of the attorneys, the Hearer's Report and the written exceptions and arguments filed by the attorney for the licensee, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 18th day of November, 1963,

ORDERED that Plenary Retail Consumption License C-177, issued by the City Council of the City of Trenton to Anthony George Cappuccio, t/a The Paddock Inn, for premises 24 South Warren Street, Trenton, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. Monday, November 25, 1963, and terminating at 2:00 a.m. Friday, January 24, 1964.

EMERSON A. TSCHUPP
ACTING DIRECTOR

24 South Warren Street



STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1263

FEBRUARY 9, 1959

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - STORKY'S, INC. V. TRENTON.
2. DISCIPLINARY PROCEEDINGS (Trenton) - NUISANCE (FEMALE IMPERSONATORS) - GAMBLING - SALES TO INTOXICATED PERSONS - SALE TO MINOR - LICENSE SUSPENDED FOR 110 DAYS.
3. DISCIPLINARY PROCEEDINGS (Hanover Township) - SUSPENSION REIMPOSED AFTER TERMINATION OF PROCEEDINGS TO REVIEW.
4. DISCIPLINARY PROCEEDINGS (Eatontown) - SALES TO MINORS - LICENSE SUSPENDED FOR 15 DAYS.
5. DISCIPLINARY PROCEEDINGS (Eatontown) - SALES TO MINORS - LICENSE SUSPENDED FOR 20 DAYS.
6. DISCIPLINARY PROCEEDINGS (Hackensack) - POSSESSING ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE IN VIOLATION OF REGULATION NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.
8. DISCIPLINARY PROCEEDINGS (Sea Bright) - SALE TO MINOR - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA. (CAPTION - SEE CORRECT BULLETIN 1265-7)

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1263

FEBRUARY 9, 1959

1. APPELLATE DECISIONS - STORKY'S, INC. V. TRENTON

STORKYS, INC., t/a STORKYS,)

Appellant,)

v.)

ON APPEAL
CONCLUSIONS AND ORDER

BOARD OF COMMISSIONERS OF THE)
CITY OF TRENTON,)

Respondent.

David A. Friedman, Esq., Attorney for Appellant.

Louis Josephson, Esq., by John A. Brieger, Esq., Attorney
for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on June 19, 1958 it denied, by resolution, appellant's application for renewal of its 1957-58 license for the following stated reasons:

'1. That on May 9, 10, 23 and 24, 1958, the licensee allowed, permitted and suffered its licensed place of business to be conducted in such manner as to become a nuisance in that it allowed, permitted and suffered female impersonators and persons who appeared to be homosexuals in and upon its licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon its licensed premises; and allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene conduct in and upon its licensed premises; and otherwise conducted its place of business in a manner offensive to common decency and public morals, in violation of Rule 5 of State Regulation No. 20.

'2. That on May 17, 23 and 24, 1958, it allowed, permitted and suffered gambling in and upon its licensed premises, viz., the playing on a device or apparatus designated as a "bowling" machine for stakes of money, in violation of Rule 7 of State Regulation No. 20.

'3. That on May 9 and 10, 1958, it sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons actually or apparently intoxicated and allowed, permitted and suffered the consumption of such beverages by such persons in and upon its licensed

premises, in violation of Rule 1 of State Regulation No. 20.

'4. That on May 24, 1958, and on divers days prior thereto, it sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon its licensed premises, in violation of Rule 1 of State Regulation No. 20.

'5. That the licensee is unfit to operate said licensed premises for the reason that said licensed premises were conducted improperly and in violation of the law and the rules and regulations relating to the conduct of the licensed premises, and it would be contrary to the best interests of the public health, public safety, public welfare and public morals to approve the application for the renewal of said license.

'6. That it is to the best interests of the surrounding community and the city in general that said application be denied.'

"Upon the filing of the appeal an order was entered by the Director on June 27, 1958 extending the term of appellant's license until further order herein.

"Appellant, in its petition of appeal, alleged, in substance, that the respondent's action was based solely on the disciplinary charges then pending, instituted by the Director, without any knowledge of the nature of the evidence upon which such charges were based and, hence, prejudged the charges; that appellant was not offered an opportunity to hear such evidence and present its defense thereto before the local issuing authority and, hence, such action was an abuse of its discretion.

"Respondent contends that its action was predicated upon a consideration of all the facts and surrounding circumstances relating to the conduct in and operation of appellant's licensed business and was a reasonable exercise of its discretionary authority.

"The violations alleged in the disciplinary charges above referred to are identical with those set forth in paragraphs 1 to 4 inclusive of the reasons asserted by respondent in denying appellant's application for renewal. On September 5, 1958 the disciplinary case was heard at the office of this Division and, thereafter, on the same day, the appeal was heard. In lieu of presenting testimony on the appeal, it was stipulated that the evidence adduced at the disciplinary hearing, together with the written stipulation filed by counsel for the respective parties and an affidavit received subsequent to the hearing, should be considered as the evidence adduced at the hearing on appeal and that the Director's determination with respect to the disciplinary charges, together with his consideration of the stipulation and affidavit, should be the basis of his conclusions and order herein.

"Contemporaneous with this report, the hearer has recommended in his report that the defendant be adjudged guilty of all

charges preferred against it in the disciplinary proceedings on the basis of the evidence presented and has recommended that its license be suspended for a period of one hundred ten days.

"Since I have considered that the violations set forth in the disciplinary proceedings have been established, there remains for consideration the issue whether the respondent was premature in considering such violations as the reason for its action and whether or not such action was an abuse of respondent's discretionary authority.

"The substance of the stipulation hereinabove referred to is that the corporate license, while under the ownership of the Storcella family, has no previous adjudicated record or been the subject of any formal complaint, and that the issuing authority has previously exhibited no policy evidenced by resolution that one violation of the type herein involved would result in a refusal to renew the license. The affidavit above referred to sets forth a statistical analysis of the action of the local issuing authority when considering renewal of licenses contemporaneous with appellant's, whereby it appears that such authority renewed a great number of licenses with records of violation or criminal convictions for violating the Alcoholic Beverage Law. It is well established that a local issuing authority may refuse to renew a license on the basis of a violation committed during the previous licensing year. The contention, stressed in appellant's brief that the local issuing authority prematurely considered the then unestablished charges and, hence, it was an improper basis for its failure to renew the license is not here a controlling factor. Such action did not deny to appellant the 'simple consideration of fairness' since it appears that the licensee has to date continued to operate the licensed business under the Director's order extending the license and the licensee has now, in fact, been adjudged guilty of all of the charges preferred against it.

"The further contention that the refusal to renew appellant's license was inequitable and unjust, resting in substance on alleged disparate treatment accorded to the licensees of Trenton, is a subject which has been previously advanced in other localities, considered and rejected. In Biscamp v. Twp. Council of the Twp. of Teaneck, 5 N. J. Super. 172, at page 175, Judge Eastwood, speaking for the Appellate Division, stated 'Assuming, but not conceding, that other licenses were granted under somewhat similar circumstances, it does not follow that the governing body should further perpetuate earlier unwise action.' The Biscamp case was cited in Nordco, Inc. v. State, 43 N. J. Super. 277 at page 288 and Judge Clapp, speaking for the Appellate Division on the subject of alleged disparate treatment among licensees in Newark, added 'Indeed, it may be that the Newark board in the exercise of its discretion might properly have refused to renew other licenses. However, as an appellate court, we are concerned merely with the question whether the refusal to renew Nordco's license was the result of intentional discrimination or other arbitrary action.' In the instant case, like the Nordco case, the appellant has not established intentional discrimination or other arbitrary action.

"I therefore recommend that respondent's action in denying appellant's application for renewal of its license be affirmed and the appeal dismissed; and that the order extending the term of appellant's license be vacated effective immediately."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by appellant's

attorney and written answering argument was filed by respondent's attorney, pursuant to Rule 14 of State Regulation No. 15. The appellant's attorney's request for oral argument thereon was denied by me.

After carefully considering the entire record herein, including the transcript of the proceedings, the memoranda filed with the Hearer by the respective attorneys prior to the Hearer's recommendations in the matter, the Hearer's Report, the written exceptions thereto and the arguments advanced by the attorneys for the respective parties herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 12th day of January, 1959,

ORDERED that the action of respondent Board of Commissioners be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order dated June 27, 1958 extending the term of appellant's license be and the same is hereby vacated, effective at 2:00 a.m., Monday, January 19, 1959, at which time appellant must cease all activity under said license.

WILLIAM HOWE DAVIS
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - NUISANCE (FEMALE IMPERSONATORS) - GAMBLING - SALES TO INTOXICATED PERSONS - SALE TO MINOR - LICENSE SUSPENDED FOR 110 DAYS.

In the Matter of Disciplinary Proceedings against

STORKYS, INC.
t/a STORKYS, INC.
151 E. Front Street
Trenton 9, New Jersey

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-195, for the 1957-58 licensing year, issued by the Board of Commissioners of the City of Trenton, and extended for the 1958-59 licensing year.

David A. Friedman, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"The following charges were preferred against defendant:

"1. On May 9, 10, 23 and 24, 1958, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered female impersonators and persons who appeared to be homosexuals in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and allowed, permitted and

suffered lewdness and immoral activity and foul, filthy and obscene conduct in and upon your licensed premises; and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

'2. On May 17, 23 and 24, 1958, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the playing on a device or apparatus designated as a "bowling" machine for stakes of money; in violation of Rule 7 of State Regulation No. 20.

'3. On May 9, and 10, 1958, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons actually or apparently intoxicated and allowed, permitted and suffered the consumption of such beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.

'4. On May 24, 1958 and on divers days prior thereto, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Kenneth ---, age 18, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.'

"Defendant has pleaded non vult to Charge 4 and not guilty to the other charges.

"At the hearing herein it was established that on May 9, 1958, at about 11:15 p.m., three ABC agents entered the defendant's licensed premises. Anthony Storcella was tending bar. According to the agents, a male referred to as 'Dino' or 'Dina' was present. He was dressed in tight slacks, with long hair in back, fluffed on his forehead, and tweezed eyebrows. He spoke with a high pitched voice, walked with exaggerated 'swishing' and 'swaying' of his hips, fluttered his eyelids when conversing with two males and displayed other effeminate mannerisms. At one time Dino displayed to those present including the agents a photograph which appeared to be a female with long dark hair wearing a strapless evening gown. Dino identified this picture as a photograph of himself. The agents concluded from what they observed that Dino was an apparent homosexual.

"The agents observed Dino dance on a number of occasions to the music of a juke box. Some of these dances are described as of a 'bumps and grinds' nature. On one of these occasions a female seated nearby began shaking her breasts. At her invitation Dino danced over to her and for a moment shook her breasts with his hand. Then Dino and the female danced together a 'fish' dance which is described as one simulating sexual intercourse. The bartender observed the dance and addressed the couple with the words 'go, go, go'.

"During their observation of Dino's conduct they observed a male with his arm around Dino whispering in his ear. This man's elbow kept slipping off the bar, his eyes appeared to be glassy,

his speech was slurred and incoherent and he staggered when he walked. The agents observed the service of alcoholic beverages by the bartender to this man while he was in such condition. This man left the bar, placed his arms around the neck and waist of the agents, placed his hand indecently on two of the agents, and later suggested to the three agents that they go home with him for a good time of an unspecified nature. He claimed to be employed as a therapist in a hospital and displayed an identification card with his name and photograph. The agents concluded that he was intoxicated. They observed three other persons there who had the appearance of intoxication and who were served with alcoholic beverages. The agents' description of what they observed is the basis for the violations charged as occurring on May 9 and 10, 1958.

"These ABC agents were again in the premises on May 17, 1958. Anthony Storcella was tending bar. They did not see Dino there and, in response to their inquiry as to his whereabouts, the bartender told them that he was there the previous evening and might come there later; that he usually stops in every night. They observed two persons playing a shuffleboard game for money stakes in which Anthony participated by betting with the respective players on the outcome of the game. This is the basis for the violation charged as occurring on May 17, 1958.

"The last of these visits by ABC agents to the premises was late in the evening of May 23 extending to the early morning hours of May 24, 1958. On this occasion Dino entered with another man and was joined by a third. These two men did not remain long in the premises and, from what they could observe, the agents suspected that they may have been homosexuals. One of the agents testified that during the course of the evening Dino made improper advances to him in the men's room. The agents and other persons played shuffleboard games with bets on the outcome thereof with Anthony Storcella, who was tending bar. During their visit the agents observed the sale of alcoholic beverages to Kenneth ---, a minor, 18 years of age. The agents ultimately disclosed their identity on this occasion to Anthony Storcella and to Richard Storcella, one of the corporate stockholders who arrived on the scene, and apprized them of the activities on the licensed premises which they had witnessed that night. The agents were then informed that the minor had previously displayed an identification card which represented him to be over 21 years of age.

"There does not appear to be any dispute that at least Dino was an apparent homosexual. Peter Storcella, another stockholder of the corporate licensee, testified 'Well, he (Dino) is a little more than out of the way'; 'a little delicate, effeminate'. Asked whether he did not consider Dino a homosexual he replied 'Well, maybe at times I did, but he never bothered anyone, he just kept his own place'.

"Robert Storcella testified that Dino 'appeared to be a little effeminate'. A patron who testified on the licensee's behalf said that 'He (Dino) had a little strange movement by the way he walked and all', although the witness claimed that he could not recognize a homosexual from a normal person unless such person made improper advances.

"Another patron testified that he thought 'He (Dino) might have been effeminate'. Obviously, Dino frequented the premises and, hence, the violation does not involve a single or occasional appearance of Dino at such premises.

"Anthony Storcella admitted that he placed bets with the

agents on May 23, 1958 on the outcome of a shuffleboard game but claimed that he did not place such bets on May 17, 1958 with the other two persons. The sale to the minor is admitted albeit attempted to be mitigated by the display by the minor of an identification card. The Storcellas profess to have no knowledge of the presence of the intoxicated person and his conduct on May 9, 1958.

"In effect then, there is no defense presented to the charge of permitting at least one homosexual to frequent the premises; or to the charge of permitting gambling; or to the charge of permitting the sale of alcoholic beverages to a minor, and the licensee's employees assume a negative position with respect to the sale to an intoxicated person and indecent conduct by him by professing lack of knowledge thereof. The only positive attitude is Anthony's assertion, as well as one of the other witnesses, that Dino did not perform an indecent dance on May 9, 1958.

"In my opinion, the preponderance of the believable evidence establishes the guilt of the defendant licensee of all the charges preferred against it and I recommend a finding to that effect. Since defendant has no prior adjudicated record, I recommend that its license be suspended for a period of sixty days on Charge 1 (Re Rutgers, Bulletin 1133, Item 2); thirty-five days on Charges 2 and 3 (Re Amster & Robins, Bulletin 1237, Item 2) and fifteen days on Charge 4 (Re Krygier, Bulletin 1234, Item 8), making a total suspension of one hundred ten days. I further recommend that no effective date be fixed for the commencement of the suspension because, in a contemporaneous report on the licensee's appeal for failure of the local issuing authority to renew its license, I recommended affirmance of such action and dismissal of the appeal and an order terminating extension of the license by the Director under which the licensee has been and is now operating, thus effectively terminating the conduct of the licensed business."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by the attorney for the defendant, pursuant to Rule 6 of State Regulation No. 16. Application by such attorney for oral argument thereon was denied.

Having carefully considered the entire record, including the transcript of the testimony, the memorandum filed with the Hearer by the attorney for defendant prior to the Hearer's recommendation in the matter, the Hearer's Report, and the exceptions and written argument submitted by such attorney, I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 12th day of January, 1959,

ORDERED that Plenary Retail Consumption License C-195, for the 1957-58 licensing year, issued by the Board of Commissioners of the City of Trenton, and extended for the 1958-59 licensing year to Storkys, Inc., t/a Storkys, Inc., for premises 151 E. Front Street, Trenton, be and the same is hereby suspended for one hundred ten (110) days. No effective date will now be fixed for the commencement of the suspension since, by my contemporaneous order dismissing the defendant licensee's appeal from the denial of renewal of such license, I have vacated my order extending the term of such license, thus effectively terminating any operation of the licensed business after 2:00 a.m., Monday, January 19, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL,
1100 Raymond Blvd. Newark 2, N. J.

June 20, 1962

BULLETIN 1453

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - GOLDBERG v. NEWARK AND HOME LIQUORS, INC.
2. DISCIPLINARY PROCEEDINGS (Trenton) - NUISANCE (HOMO~~SEXUALS~~) - UNQUALIFIED EMPLOYEES - LICENSE SUSPENDED FOR 60 DAYS.
3. DISCIPLINARY PROCEEDINGS (Camden) - SALE TO MINORS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
4. DISQUALIFICATION REMOVAL PROCEEDINGS - RECEIVING STOLEN GOODS - DISQUALIFICATION REMOVED.
5. DISCIPLINARY PROCEEDINGS (Highland Park) - SALE TO MINORS - ALLEGED MITIGATION - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
6. STATUTORY AUTOMATIC SUSPENSION (Clifton) - ORDER LIFTING SUSPENSION.
7. STATUTORY AUTOMATIC SUSPENSION (Hackensack) - ORDER LIFTING SUSPENSION.
8. LICENSED PREMISES - INSTALLATION OF MICROPHONE JACKS AT BAR TO PERMIT PATRONS TO USE CITIZENS BAND RADIO DISAPPROVED.
9. DISCIPLINARY PROCEEDINGS (Raritan Township - Monmouth County) - SALE TO A MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
10. STATE LICENSES - NEW APPLICATIONS FILED

leaders are striving to improve.

"I conclude, therefore, that appellants have sustained the burden imposed upon them of establishing that the action of respondent Board was an unreasonable exercise of its discretionary power, and I recommend that said action be reversed."

Pursuant to the provisions of Rule 14 of State Regulation No. 15, written exceptions to the Hearer's Report and written argument to substantiate the exceptions were filed by respondents' attorneys and written answering argument was filed by appellants' attorney.

Having carefully considered the evidence herein, the Hearer's Report, the exceptions to and the argument pro and con with respect thereto, I concur in the findings and conclusion of the Hearer and adopt his recommendation.

Accordingly, it is, on this 27th day of April 1962,

ORDERED that the action of respondent Board in granting the application of respondent Home Liquors, Inc., for a person-to-person and place-to-place transfer of plenary retail distribution license D-158, be and the same is hereby reversed.

WILLIAM HOWE DAVIS
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - NUISANCE (HOMOSEXUALS) - UN-
QUALIFIED EMPLOYEES - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary
Proceedings against

BRIERHURST ASSOCIATES, INC.
t/a HOTEL PENN
81 So. Clinton Avenue
Trenton 9, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-169, issued by the Board of
Commissioners of the City of Trenton.

Joseph S. Bash, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"The Division preferred the following charges
against the defendant:

- '1. On April 19, 29, 30, May 7 and 21, 1961, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, e.g., males impersonating females, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; allowed, permitted and suffered lewdness and immoral activity and foul,

filthy and obscene language and conduct by such persons and by others in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

2. On April 21, 1961, and prior thereto, you employed and allowed, permitted and suffered the employment in and upon your licensed premises of persons not bona fide residents of the State of New Jersey; contrary to and in violation of Rule 4 of State Regulation No. 13.

"When the matter came on for hearing, defendant entered a plea of not guilty to each charge. On recommendation of the Division's attorney, Charge 2 was nolle prossed.

"To substantiate Charge 1, the Division called as its witnesses the two ABC agents who participated in the investigation of defendant's licensed premises. The testimony of each agent corroborates that of the other and may be summarized as follows: On Each of the dates alleged in the charge, both agents visited defendant's licensed premises to ascertain whether or not defendant was conducting its place of business in a manner offensive to common decency and public morals. On their first visit, April 19, 1961, they arrived at 9:10 p.m. and remained until 11:00 p.m. During their stay the patronage increased from five males to 17 males and one female and they concluded from the effeminate mannerisms and speech of half of the males that they appeared to be homosexuals. On the second visit, April 29, 1961, they entered the licensed premises at about 11:20 p.m. and remained until 2:00 a.m. the following morning. During their stay on this occasion, the patronage increased from 23 males and five females to 33 males and seven females, and they concluded that 80 per cent of the males appeared to be homosexuals. On this occasion, an apparent homosexual known as 'Chuck' danced gracefully with one of the females who suggested to him that he should dance alone, to which he replied, 'Oh, I can't do that any more; last time I did I caught hell from Jimmy', referring to James Saccatelli, vice-president and resident manager of the corporate-licensee, who was seated nearby. A male patron seated near Saccatelli greeted Chuck with 'Hi ya, lover', and Chuck replied with, 'Hi ya, lover, I'm at my best behavior tonight'. Chuck purchased numerous drinks for those around him at the bar including the agents and in toasting them would say in an effeminate manner, 'Suck it up'. When Chuck was about to leave, another apparent fag told him that he would see him again and Chuck replied, 'I'm always in here. I'm one of the fixtures'. On May 7, 1961, the agents entered the licensed premises at about 12:15 a.m. and remained until 1:55 a.m. During their stay, the patronage remained at about 36 males (90 per cent of whom appeared to be homosexuals) and three females. One fag seated at the bar was heard to say to another, 'Don't you dare comb your hair any other way. You look like one of the Everly Brothers', and the other said, 'No, I'm one of the McGuire Sisters - Christine, you know the one'. Both fags giggled and were joined by a third who said, 'Oh, don't be so gay', and one of the others rejoined, 'Why not, this is the club house'. A duet and a female named Elou entertained alternately on this occasion and Elou sang double entendre songs which depicted homosexuals and the experiences of a prostitute. About closing time, one fag was heard to say to another, 'Goodnight, honey', and another fag was seen to place his hand on the privates of another who held it there momentarily and another fag was heard to say, 'Drive me home, sweetheart'.

"Before entering defendant's premises on May 21, 1961, both agents had to cross a picket line. When they entered they were met by Mrs. Saccatelli, assistant manager of the licensed premises, who was standing just inside the entrance door. A female in the picket line was heard to say, 'And they'd better get rid of the queers in there. The place ought to be closed up'. The agents and Mrs. Saccatelli proceeded into the hotel lobby and went to the desk at which James Saccatelli was stationed. Mrs. Saccatelli said to her husband, 'Did you hear what she said, she's talking about queers. She should talk'. When the agents said that the female in the picket line had a nerve, Mrs. Saccatelli said, 'Yes, she's more queer than most of them inside'. When it was suggested to her that she didn't have much trouble with the fags, she said, 'No, they're all well-behaved. They keep pretty much to themselves and don't bother anybody. We told them they could come any time they wanted, as long as they behaved themselves and didn't carry on. They are sick people and have to be pitied'. Thereafter the agents went into the barroom where, during their stay, the patronage increased from 45 males and three females to 50 males and six females. The agents concluded from their observation that 90 per cent of the males appeared to be homosexuals. Chuck, who was at the bar, joined the agents and when one of them addressed him as Charley, Chuck said, 'Don't call me that. That's a man's name and I'm a lady. Just call me Miss'. Throughout Chuck's conversation with the agents he would cup his breasts and make suggestive remarks and use expressions such as 'honey', 'baby' and 'sweetheart'. When the agents pointed out that most of the fags wore ties and asked Chuck where his tie was, he replied, 'Real ladies never wear ties'. Chuck later said, 'All these girls in here are looking for a man', and when asked if he ever uses rooms in the hotel, he said, 'I have two rooms always in reserve. Room 25 has a big, beautiful bed. I love it'. When asked if he could take care of both agents, he replied in the affirmative, telling them that he was equipped by nature to do so and when asked what his charge would be he said, 'I only charge when there is someone I don't like and I want to get rid of him; but I always love it too much to think about money'. Shortly thereafter, the agents engaged in conversation with Mr. Saccatelli and when they told him that the crowd was pretty well behaved, he said, 'Yes, we never have any trouble'. Referring to the pianist Elou, the agents remarked that the fags seemed to go for her and Saccatelli agreed. When they asked how long the fags had been coming into the premises, Saccatelli said, 'Ever since she (Elou) started here, last October, I think'. At this point, the agents identified themselves to Mr. and Mrs. Saccatelli and informed them of the violations. Mr. Saccatelli said that the apparent homosexuals had been coming into the licensed premises since last October, but that he never encouraged them to do so. Mrs. Saccatelli asked the agent, 'How can you call anybody queer? You can be sued for libel', and continued, 'We really didn't know what to do when they started coming in, but we never encouraged their business, either'. One of the agents then said to Chuck, who was standing nearby, 'Before you told us you were a gay, what do you have to say about it now?' and Chuck replied, 'Now the circumstances are different; let's not talk about it'.

"The testimony of the agents shows that on each of their visits the bartenders on duty were Robert Wartman and John Chell, Jr. It further shows that the numerous male patrons used a limp wrist action, held their cigarettes very daintily when they smoked, held their glasses delicately, swished their hips from side to side as they walked on the balls of their feet, spoke in a high-pitched, lisping tone of voice and addressed one another in endearing terms such as 'honey', 'baby', 'darling', 'beautiful' and 'mother'.

"Witnesses appearing for the defendant were Police Sergeant John Prihoda, Police Officer John T. Kennedy, James Saccatelli, Mrs. Carol Saccatelli, bartenders Robert Wartman and John Chell, Jr., Nan Wheeler and Samuel Naples.

"The testimony of Sergeant Prihoda and Detective Kennedy who work as a team investigating alcoholic beverage complaints, may be summarized as follows: On May 10, 1961 they visited defendant's licensed premises to investigate a complaint and were told by Mr. Saccatelli that he had been informed by Detective Butcher that a complaint had been received by the Chief regarding homosexuals being permitted on the licensed premises. Mr. Saccatelli said that he was unaware of any such activity in the tavern and was told what he should be on the lookout for. Mr. Saccatelli said he would cooperate and inform his bartenders 'to discontinue serving any people that were homosexuals and even call the police department if they had any trouble'. Mr. Saccatelli then showed them a copy of the letter he had sent to the city authorities and to the State Director requesting an investigation to ascertain if such activity was being permitted on the premises. The two officers visited the licensed premises on May 12, 1961 and remained from 11:45 p.m. to 12:20 a.m. the following morning, and they again visited the premises on May 26, 1961 and remained from 12:05 a.m. until 1:00 a.m., during which times 'we observed no unusual actions on the part of any patron'.

"The testimony of Mr. and Mrs. Saccatelli may be summarized as follows: On May 21, 1961, the agents told Mr. Saccatelli that it was apparent that he had a bar full of homosexuals and that he replied, 'They seem all right to me. They don't seem like homosexuals to me. They are sitting down behaving themselves, whoever they are. I don't know who they are. They are customers as far as I'm concerned and I don't know them to be homosexuals'. He said further that he knew Chuck and never saw him or any other customer act in an unusual manner; that when he asked the agents if Chuck did anything wrong at the bar, one of them said, 'No, Chuck is in the clear as far as I know. We don't want to make no trouble for anybody', and that he replied, 'Well, you're telling me I've got a bar full of homosexuals. As far as I know, I don't see anything and no unusual behavior going on. Can you go in there and point somebody out to me right now? I'll go right up and tell them to get out', and that the agent said, 'Why, no'.

"On cross-examination, both Mr. and Mrs. Saccatelli testified that prior to the agents' visits they had been informed by Detective Butcher that he had received numerous complaints about homosexuals frequenting the licensed premises. They testified further that on one occasion, Mr. Saccatelli ejected five or six men 'because they had come in and put their arms around the other fellows' shoulders when they went in there to say hello'.

"Robert Wartman testified that on May 7, 1961, after the police officer left the premises, one of the agents asked, 'What did the officer want, is there something wrong?'; that he replied, 'There isn't anything wrong', and that when the taller agent said, 'I don't know why they would want to bother the queers here because they're well-behaved', he retorted that there were no queers there, adding, 'In the State of New Jersey a tavern owner or a bartender, if they knowingly knew that they had a queer, they could not serve them'. He further testified that he had been warned previously by Mr. Saccatelli to be doubly careful because of the warning received from Detective Butcher and 'this was constantly in my mind', and that he didn't observe anyone in the place who appeared to him to be a homosexual. With respect to

Chuck, he testified that he has a masculine voice, a crew hair-cut, stands about six feet, walks fast and danced only with females on the premises and that he did not appear to him to be a homosexual; that when the agents told him what Chuck said about taking them to a room to engage in indecent acts he said, 'Excuse my language, he's full of ---'; that he discussed the alleged indecency with John Chell, the other bartender, who asked the agents if it were true and that the agents, in the presence of both bartenders and Chuck, said, 'There is nothing wrong'.

"John Chell, Jr., testified that on May 21, 1961, 'Bob (the other bartender) told me Chuck was talking to these two fellows there and Chuck said he could take care of them, get a room and take care of both of them. Bob told me this here and I couldn't believe it. I got mad at Bob for talking like that. I went down to Chuck and asked him what he had said to the guys, he said, "I didn't say anything". I said, "Come up here with me, I want you to talk to them". I brought him to the two fellows and said, "Come here, Bob, I want you to listen". I said to the two agents, "What did this here goof, that's what I called him, say? Did he say anything wrong?" The agents said, "He didn't say anything wrong, he was just kidding a little bit". I walked away'.

"Mrs. Wheeler testified that she is presently unemployed; that she resides at the Hotel Penn and visits the barroom frequently; that on one occasion she danced with Chuck and that she found nothing effeminate about him or the other male patrons.

"Samuel Naples testified that he has known Mr. Saccatelli for many years; that he had visited the licensed premises from April 19 through May 21 and that he had not observed any of the patrons act in an effeminate manner.

"The following exhibits were received in evidence: D-1 - a letter from Mr. Saccatelli dated May 11, 1961, addressed to the Director, in which he states that the Police Department of the City of Trenton had informed him that complaints had been received by it respecting undesirables who frequent defendant's establishment and assuring the Director that he and his personnel will be on guard to keep them out. S-1 - daily report sheet of Police Officer Joseph Fasanella, in which he states that at 1:45 a.m., Sunday, May 7, 1961, he observed through the bar entrance door of defendant's licensed premises, two unidentified white men embracing and kissing each other; that when he entered the barroom, the men proceeded to the other end of the bar and apparently left the premises; that upon further investigation he observed that the bar was loaded with "queers" who were hugging each other; that the patronage consisted of four women and 25 to 30 males, and that when he informed John Chell of the 'conditions', he was advised to see the manager who was not around at the time.

"Upon completion of the testimony, defendant's attorney, having requested leave to subpoena Officer Fasanella, the hearing was adjourned. When the matter was continued, Officer Fasanella appeared and was cross-examined at length. His testimony substantiates his report.

"The testimony herein has been set out in some detail to show that a high percentage of the males frequenting defendant's licensed premises on the dates alleged were apparently sex deviates.

"Proper liquor control dictates that licensed premises must not become a haven for homosexuals or lesbians. To permit such personages to congregate and fraternize therein is an offense against common decency and public morals which cannot be condoned.

See Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N. J. Super. 405.

"One would indeed be naive to believe that defendant's agents couldn't discern that the males in question were apparent homosexuals. The managers of the establishment had been warned to be on their guard for such personages who, they were informed, could be recognized by their conspicuous guise, demeanor, carriage and appearance. 'It is often in the plumage that we identify the bird.' Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, supra.

"As was stated by Commissioner Driscoll in Bilowith v. Passaic, Bulletin 527, Item 3, 'Licensees may not avoid their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises'.

"Having had the opportunity to judge the credibility of the witnesses, I find that the testimony of the agents clearly depicts the improprieties that were permitted on the licensed premises on the dates alleged, and that the testimony of defendant's witnesses, for the most part, is incredible. I conclude, therefore, that the Division has established the truth of the charge by a fair preponderance of the believable evidence and I recommend that defendant be adjudged guilty as charged, and that an order be entered suspending its license for a period of sixty days. Re Pappy's Bar, Inc., Bulletin 1418, Item 1."

Written exceptions to the Hearer's Report and written argument to substantiate the exceptions were filed with me by the licensee's attorney within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the record herein including the transcript of the testimony, the exhibits, the brief submitted by the licensee's attorney in lieu of oral argument, the Hearer's Report and the exceptions and argument with respect thereto, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 30th day of April 1962,

ORDERED that Plenary Retail Consumption License C-169, issued by the Board of Commissioners of the City of Trenton to Brierhurst Associates, Inc., t/a Hotel Penn, for premises 81 So. Clinton Avenue, Trenton, be and the same is hereby suspended for the balance of its term, commencing at 2:00 a.m. Monday, May 7, 1962; and it is further

ORDERED that any renewal of said license shall be and remain under suspension until 2:00 a.m. Friday, July 6, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

HOTEL PENN

Opposite Pennsylvania R. R. Station
TRENTON N. J.

Featuring the Famous Mirror Bar
Winner First Prize — Chicago World's Fair 1893

D (REG. U. S. PAT. OFF.)

